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14  
15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA  
17 WESTERN DIVISION

18 UNITED STATES OF AMERICA and  
19 STATE OF CALIFORNIA,

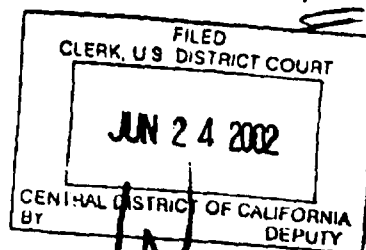
20 Plaintiffs,

21 v.

22 MONTROSE CHEMICAL CORP.  
OF CALIFORNIA, et al.,

23 Defendants.

24  
25 AND RELATED COUNTER, CROSS,  
26 AND THIRD PARTY ACTIONS.

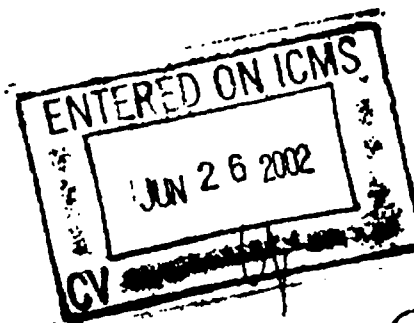


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✓ CLSD

NO. CV 90-3122-R

PARTIAL CONSENT DECREE

(RELATING TO THE CURRENT  
STORM WATER PATHWAY)



2687

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1 White's Point Outfall into the Pacific Ocean. The First Claim was settled in a Consent  
2 Decree entered by the Court on March 15, 2001.

3 C. In the Second Claim for Relief of the Complaint, the United States and  
4 DTSC asserted a claim for recovery of costs incurred and declaratory judgment for costs  
5 to be incurred by EPA and DTSC in response to the release or threatened release of  
6 hazardous substances into the environment at and/or from the Montrose Plant Property  
7 pursuant to Section 107(a)(1-4)(A) of CERCLA, 42 U.S.C. § 9607(a)(1-4)(A).

8 D. The Third Amended Complaint specified that the Second Claim included  
9 costs incurred and declaratory judgment for costs to be incurred by EPA and DTSC in  
10 connection with the Offshore Areas. This portion of the Second Claim was also settled in  
11 the Consent Decree entered on March 15, 2001.

12 E. Pursuant to a Partial Consent Decree that was entered by the Court on  
13 October 20, 2000, the DDT Defendants have already paid \$5.125 million as  
14 reimbursement and settlement of claims for past response costs incurred by the United  
15 States and DTSC, as defined therein. In addition, Montrose previously paid  
16 \$1,354,612.37 as reimbursement of past response costs incurred by the United States with  
17 respect to portions of the Onshore Areas.

18 F. Trial in this action between Plaintiffs and the DDT Defendants commenced  
19 on October 17, 2000.

20 G. On October 18, 2000, the Court took under submission the issue of liability  
21 of the DDT Defendants for certain Onshore Areas to which Plaintiffs contended that  
22 hazardous substances from the Montrose Plant Property have been released, namely, (1)  
23 the Neighborhood Areas and (2) the Current Storm Water Pathway. On October 19,  
24 2000, Defendants moved for judgment of non-liability on these two issues, and on  
25 October 26, 2000, Plaintiffs opposed those two motions.

26 H. On October 27, 2000, the Court took under submission the issue of the  
27 alleged liability of Chris-Craft as an operator of the Montrose Plant Property.

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1 I. The "Current Storm Water Pathway" carries storm water downstream of  
2 the Montrose Plant Property. The Current Storm Water Pathway flows to the  
3 Consolidated Slip of the Los Angeles Harbor. Plaintiffs contended at trial that DDT from  
4 the Montrose Plant Property flowed into the Current Storm Water Pathway and that the  
5 DDT Defendants are liable for all costs of responding to releases of DDT at the Current  
6 Storm Water Pathway. The DDT Defendants denied liability. In response to  
7 administrative orders issued by EPA and the Regional Board in the 1980's, Montrose  
8 Chemical Corporation of California, Inc. has implemented measures to prevent the  
9 release of DDT contaminated soil into the Current Storm Water Pathway. See, U.S. EPA,  
10 Region 9, CERCLA Unilateral Administrative Order No. 88-10.

11 J. Both EPA and Montrose have conducted investigations of the Current  
12 Storm Water Pathway. in the Final Remedial  
13 Investigation Report for the Montrose Superfund Site, dated May 18, 1998. As of  
14 November, 2001, EPA has not issued a Record of Decision selecting remedial actions for  
15 the Current Storm Water Pathway, although EPA may issue such a Record of Decision in  
16 the future.

17 L. Subject to the reservations and re-openers in this Decree, this Decree finally  
18 and fully resolves all present and future liability of the Released Parties to the United  
19 States, Regional Board and DTSC for Response Costs relating to the Current Storm  
20 Water Pathway. This Decree does not resolve claims relating to the following: the  
21 Montrose Plant Property; the real property located at 1401 West Del Amo Blvd., Los  
22 Angeles, California and owned by Jones, Inc.; groundwater contaminated by hazardous  
23 substances at or emanating from the Montrose Plant Property (including DNAPL); those  
24 portions of the LADWP Right of Way adjacent to 20201 Normandie Avenue; and those  
25 portions of the Normandie Avenue Ditch from 20201 Normandie Avenue to the Kenwood  
26 Drain.

27 M. This settlement is made in good faith after arm's-length negotiations  
28 conducted under the supervision of Special Master John Francis Carroll. The United

1 States, Regional Board and DTSC, and the DDT Defendants agree, and this Court by  
2 entering this Consent Decree finds, that this Consent Decree has been negotiated by the  
3 Parties in good faith, that settlement of this matter and entry of this Decree will avoid  
4 further complicated litigation between the Parties, is the most appropriate means to  
5 resolve the matters covered herein, and is fair, reasonable and in the public interest.

6 **NOW, THEREFORE**, with the consent of the Parties to this Decree, it is hereby  
7 **ORDERED, ADJUDGED AND DECREED:**

8 **JURISDICTION AND VENUE**

9 1. This Court has personal jurisdiction over the Parties. This Court has  
10 jurisdiction over the subject matter of this action and the Parties to this Decree pursuant to  
11 28 U.S.C. §§ 1331, 1345, 1651 and 1367, and Sections 106, 107 and 113(b) of CERCLA,  
12 42 U.S.C. §§ 9606, 9607 and 9613(b). The Released Parties consent to and shall not  
13 challenge entry of this Consent Decree or this Court's jurisdiction to enter or enforce this  
14 Consent Decree.

15 **APPLICABILITY OF DECREE**

16 2. The provisions of this Decree, including the covenants not to sue and  
17 contribution protection, shall be binding on, apply to, and inure to the benefit of the  
18 United States, Regional Board, DTSC, the DDT Defendants and their successors and  
19 assigns, and for the purposes of the sections of this Decree called "Covenants by Released  
20 Parties," "Covenant Not to Sue For Response Activities and Costs Relating to the  
21 Current Storm Water Pathway, And Reservation of Rights," and "Effect of  
22 Settlement/Contribution Protection," the Released Parties, their successors and assigns.  
23 No change in the ownership or organizational form or status of the DDT Defendants shall  
24 affect their rights or obligations under this Decree.

25 **EFFECT OF SETTLEMENT/ENTRY OF JUDGMENT**

26 3. This Decree was negotiated and executed by the Parties hereto in good faith  
27 at arm's length to avoid the continuation of expensive and protracted litigation and is a  
28 fair and equitable settlement of claims which were vigorously contested. The DDT

1 Defendants do not admit any of Plaintiffs' allegations or claims set forth herein and deny  
2 any liability whatsoever for Plaintiffs' claims against the DDT Defendants set forth in the  
3 Complaint, and do not admit that any area other than the Montrose Plant Property has  
4 been impacted by hazardous substance releases from the Montrose Plant Property. This  
5 Decree should not constitute or be interpreted, construed or used as evidence of any  
6 admission of liability, law or fact. Except as otherwise provided in the Federal Rules of  
7 Evidence, this Consent Decree is not admissible in evidence against any Party by any  
8 person or entity not a Party to the Decree in any judicial or administrative proceeding.

9       4.     Upon approval and entry of this Decree by the Court, this Decree shall  
10 constitute a final judgment between and among the United States, Regional Board, and  
11 the DTSC, and the DDT Defendants regarding the matters addressed and resolved by this  
12 Decree.

### 13                                   DEFINITIONS

14       5.     This Decree incorporates the definitions set forth in Section 101 of  
15 CERCLA, 42 U.S.C. § 9601, including but not limited to the definitions of the terms  
16 "release" and "response." In addition, whenever the following terms are used in this  
17 Decree, they shall have the following meanings:

18       A.     "Current Storm Water Pathway" means the Kenwood Drain, the Torrance  
19 Lateral, the Dominguez Channel (from Laguna Dominguez, the most northern point of  
20 tidal influence in the Dominguez Channel, to the Consolidated Slip), and the portion of  
21 the Los Angeles Harbor known as the Consolidated Slip from the mouth of the  
22 Dominguez Channel south to but not extending beyond Pier 200B and 200Y.

23       B.     "Date of Entry of this Decree" shall mean the date on which the District  
24 Court has approved and entered this Decree as a judgment.

25       C.     "Date of Execution of this Decree" shall mean the date on which the Decree  
26 has been signed by Defendants.

27       D.     "Date of Final Approval of this Decree" shall mean the later of (1) the date  
28 on which the District Court has approved and entered this Decree as a judgment and all

1 applicable appeal periods have expired without an appeal being filed, or (2) if an appeal is  
2 taken, the date on which the District Court's judgment is affirmed and there is no further  
3 right to appellate review. However, if no person appears in District Court to oppose entry  
4 of this Decree, then the Date of Final Approval of this Decree shall mean the Date of  
5 Entry of this Decree.

6 E. "Date of Lodging of this Decree" shall mean the date that this Decree is  
7 lodged, or a copy of it is filed, with the Court.

8 F. "DTSC" for purposes of this Consent Decree shall include all of the  
9 following: the California Department of Toxic Substances Control; the California  
10 Hazardous Substances Account, as defined in California Health and Safety Code § 25330;  
11 the California Hazardous Substance Cleanup Fund, as defined in California Health and  
12 Safety Code § 25385.3; and the California Toxic Substances Control Account, as defined  
13 in California Health and Safety Code § 25173.6.

14 G. "Interest" shall mean interest at the rate specified for interest on investments  
15 of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of  
16 Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42  
17 U.S.C. § 9607(a).

18 H. The "Kenwood Drain" shall mean for purposes of this Decree that  
19 subsurface storm water conveyance that begins on the west side of Normandie Avenue  
20 (adjacent to the Farmers Brothers facility), crosses under Normandie Avenue, proceeds  
21 along 204<sup>th</sup> Street, proceeds down Kenwood Avenue crossing Torrance Boulevard. The  
22 Kenwood Drain is located within, but is not part, of the "Neighborhood Areas." The  
23 Kenwood Drain is part of the "Current Storm Water Pathway."

24 I. "Montrose Plant Property" shall mean for purposes of this Decree the  
25 approximately thirteen (13) acre parcel at 20201 South Normandie Avenue, Los Angeles,  
26 California at which, among other things, Montrose Chemical Corporation of California  
27 operated a DDT manufacturing and, later, a formulation plant.

28



1 J. The "Neighborhood Areas" includes all residential properties in 1) the area  
2 of Los Angeles County bounded by Normandie Avenue, New Hampshire Avenue,  
3 Torrance Blvd., and Del Amo Blvd., 2) the area of Los Angeles County bounded by  
4 Denker Avenue, Del Amo Blvd., Western Avenue and Torrance Blvd., and 3) all soils  
5 and debris excavated from and transported out of the geographic areas delineated in items  
6 1 and 2 of this definition (including but not limited to the Storage Cells themselves) as a  
7 result of the implementation of the removal action selected in the Removal Action  
8 Memorandum. The term "Neighborhood Areas" does not include groundwater (including  
9 any DNAPL) or the Kenwood Drain.

10 K. "Parties" shall mean the United States, Regional Board, DTSC, and the  
11 Released Parties.

12 L. "Regional Board" for the purposes of this Consent Decree shall mean the  
13 California Regional Water Quality Control Board, Los Angeles Region.

14 M. "Released Parties" shall mean the DDT Defendants, their predecessor or  
15 successor entities, and direct or indirect parents or subsidiaries, to the extent of any  
16 derivative liability attributable to any such entities, and further includes any of such  
17 entities' current or former officers, directors, and employees, provided and to the extent  
18 that any such individuals were acting within the scope of their duties and in their capacity  
19 as officers, directors, or employees; and, for the purposes of Paragraphs 7-10 and 22-24,  
20 "Released Parties" includes Stauffer Management Company (now Stauffer Management  
21 Company, LLC by merger), Stauffer Management Company, LLC, Imperial Chemical  
22 Industries PLC, ICI International Investments, Inc., Zeneca, Inc., Zeneca Holdings, Inc.,  
23 Stauffer Chemical Company (a former corporation organized under the laws of the State  
24 of Delaware), Rhodia, Inc., Aventis CropScience USA, LP, News Publishing Australia  
25 Ltd., and News America Incorporated, together with their predecessor or successor  
26 entities, and direct or indirect parents or subsidiaries, to the extent of any derivative  
27 liability attributable to any such entities, and further includes any of such entities' current  
28 or former officers, directors, and employees, provided and to the extent that any such

1 individuals were acting within the scope of their duties and in their capacity as officers,  
2 directors, or employees.

3 N. "Response Costs" shall mean for purposes of this Decree all costs of  
4 response (including both removal and remedial costs, and all remaining past, present, and  
5 future response costs) as provided in Section 107(a)(1-4)(A), (B) and (D) of CERCLA, 42  
6 U.S.C. § 9607(a)(1-4)(A), (B) and (D), and as defined in Section 101(25) of CERCLA, 42  
7 U.S.C. § 9601(25), that the United States (including EPA), Regional Board, DTSC, or  
8 any other person have incurred in the past or will incur in the future with respect to the  
9 Current Storm Water Pathway.

10 O. "Stauffer Dominguez Plant Property" shall mean that real property located  
11 at 20720 South Wilmington Avenue, Dominguez, California and formerly occupied by  
12 Stauffer Chemical Company.

13 P. "United States" for purposes of this Consent Decree shall mean the United  
14 States of America, including its departments, agencies and instrumentalities.

15 **PAYMENTS WITH RESPECT TO RESPONSE ACTIVITIES**

16 6. A. Within ten (10) business days after the Date of Final Approval of this  
17 Decree, the DDT Defendants shall pay to EPA the sum of \$1,400,000 plus Interest  
18 accruing from the Date of Lodging of this Decree, for Response Costs. The DDT  
19 Defendants shall make this payment to "the United States Environmental Protection  
20 Agency, Montrose Chemical National Priorities List Superfund Site Special Account."  
21 The payment to EPA shall be made by Electronic Funds Transfer ("EFT" or "wire  
22 transfer") in accordance with instructions provided by the United States to the DDT  
23 Defendants at the time of Lodging of the Decree. Any EFT received after 11:00 A.M.  
24 (Eastern Time) will be credited on the next business day. The DDT Defendants shall  
25 send notice of the EFT to Plaintiffs as provided in Paragraph 25 of this Decree. All  
26 payments to the United States under this Paragraph shall reference the Montrose  
27 Chemical Corporation of California Superfund Site, Site # 9T26, DOJ Case # 90-11-3-  
28 511/4, and U.S.A.F.I. file number 9003085. The amounts paid to EPA pursuant to this

1 Consent Decree and deposited into the above-referenced EPA special account shall be  
2 retained and used to conduct or finance response actions at or in connection with the  
3 Montrose National Priorities List Superfund Site or transferred by EPA to the EPA  
4 Hazardous Substance Superfund.

5 B. Within ten (10) business days after the Date of Final Approval of this  
6 Decree, the DDT Defendants shall pay DTSC \$50,000 plus Interest accruing from the  
7 Date of Lodging of this Decree for Response Costs. The payment to the DTSC shall be  
8 made by certified check payable to "Cashier, California Department of Toxic Substances  
9 Control", and shall bear on its face this case name and number. The DDT Defendants  
10 shall send notice of payment to Plaintiffs as provided in Paragraph 25 of this Decree.

11 Payment shall be mailed to:

12 DTSC Accounting office  
13 DTSC  
1001 I Street  
14 Sacramento, CA 95814

15 C. Within ten (10) business days after the Date of Final Approval of this  
16 Decree, the DDT Defendants shall make a payment of \$450,000 into a Court Registry  
17 Account ("the Court Registry Account"). The payment shall be made by certified or bank  
18 check payable to "Clerk, United States District Court." The check shall include on its  
19 face a statement that it is a payment in Civil Action No. CV 90-3122-R (C.D. Cal.) and  
20 shall be sent to:

21 Office of the Clerk  
United States District Court for the  
22 Central District of California  
312 North Spring Street  
23 Los Angeles, CA 90012-4793

24 The DDT Defendants shall send notice of this payment to Plaintiffs as provided in  
25 Paragraph 25 of this Decree. The Registry of Court shall administer the amount  
26 transferred by the DDT Defendants in an interest bearing account as provided in the  
27 Order Directing the Deposit of Settlement Amounts Into the Registry of Court ("Deposit  
28 Order") issued by this Court pursuant to Rule 67 of the Federal Rules of Civil Procedure,  
28 U.S.C. section 2041, and Local Rule 22 of the Local Rules for the Central District of

1 California. The Deposit Order shall be lodged concurrently with the lodging of this  
2 Decree and shall be entered by the Court at the time of entry of this Decree. All funds  
3 and all interest accrued thereon in the Court Registry Account shall be held in the name of  
4 the "Clerk, United States District Court" for the benefit of the Regional Board. Upon  
5 application of the Regional Board and upon order of this Court, the monies in the Court  
6 Registry Account, including interest, shall be disbursed at the direction of the Regional  
7 Board for use in response or abatement actions relating to the Current Storm Water  
8 Pathway.

9 **COVENANT NOT TO SUE FOR**  
10 **RESPONSE ACTIVITIES AND COSTS RELATING TO THE**  
11 **CURRENT STORM WATER PATHWAY, AND RESERVATION OF RIGHTS**

12 7. Except as specifically provided in Paragraphs 8 and 9 of this Decree, the  
13 United States, Regional Board and DTSC each hereby covenants not to sue or to take any  
14 other civil or administrative action against the Released Parties to compel response  
15 activities relating to the Current Storm Water Pathway, or to recover Response Costs,  
16 including but not limited to, costs for studies and evaluations of the area covered by  
17 response activities under CERCLA Sections 106 and 107, 42 U.S.C. §§ 9606 and 9607,  
18 or pursuant to the California Hazardous Substance Account Act, California Health and  
19 Safety Code §§ 25300, et seq., In  
20 addition, the United States, Regional Board and DTSC each hereby covenants not to sue  
21 or take administrative action against the Released Parties to compel response activities,  
22 with respect to the Current Storm Water Pathway or recover Response Costs under the  
23 Resource Conservation and Recovery Act ("RCRA") Sections 3008(h), 3013, or 7003, 42  
24 U.S.C. §§ 6928(h), 6934, or 6973, or California Health and Safety Code § 25187. The  
25 Regional Board also hereby covenants not to sue or take administrative action against the  
26 Released Parties to compel abatement activities with respect to the Current Storm Water  
27 Pathway under California Water Code § 13304. DTSC hereby further covenants not to  
28 sue or take administrative action against the Released Parties to compel response

1 activities with respect to the Current Storm Water Pathway or to recover Response Costs  
2 under Section 7002 of RCRA, 42 U.S.C. § 6972.

3 8. The covenants set forth in Paragraph 7 pertain only to matters expressly  
4 specified therein, and extend only to the Released Parties. Any claim or defense which  
5 the United States, Regional Board or DTSC has against any other person or entity is  
6 expressly reserved. The United States, Regional Board and DTSC reserve, and this  
7 Decree is without prejudice to, all other rights and claims against Released Parties with  
8 respect to all other matters, including but not limited to, the following:

9 A. any and all claims against the Released Parties based upon or resulting from  
10 a failure to meet a requirement of this Decree;

11 B. claims for criminal liability;

12 C. claims for violations of any other federal or state law;

13 D. claims arising from the presence of a hazardous substance at any location  
14 outside of the Current Storm Water Pathway (except as provided for in prior consent  
15 decrees in this action with the Released Parties);

16 E. claims for natural resources damages with respect to the Current Storm  
17 Water Pathway; provided, however, that nothing in this sub-paragraph E shall affect the  
18 scope of the releases and covenants not to sue provided by the Natural Resource Trustees  
19 to the Released Parties included in the Partial Consent Decree with Montrose Chemical  
20 Corporation of California, Aventis CropScience USA, Inc., Chris-Craft Industries, Inc.,  
21 and Atkemix Thirty-Seven, Inc. (Relating To Offshore Matters and Department of Justice  
22 Costs) that was entered by the Court on March 15, 2001, or otherwise resurrect any  
23 related claims extinguished by the Offshore Consent Decree; and

24 F. any and all claims against the Released Parties based upon or resulting from  
25 the future disposal or release of hazardous substances into the Current Storm Water  
26 Pathway from the Montrose Plant Property or from those portions of areas adjacent to the  
27 Montrose Plant Property that are subject to U.S. EPA, Region 9, CERCLA Unilateral  
28 Administrative Order No. 88-10, attached hereto.

1           G.     Any and all claims against any Released Party, including any and all civil or  
2 administrative actions against any Released Party to compel abatement activities under  
3 California Water Code § 13304, based upon or resulting from the disposal, release or  
4 threat of release of waste or hazardous substances into the Current Storm Water Pathway:  
5 1) from any other facility owned or operated by that Released Party, or 2) from any  
6 facility to which that Released Party has arranged for disposal or treatment of hazardous  
7 substances owned or possessed by that Released Party, or 3) any release during  
8 transportation to a facility with which that Released Party has arranged for disposal or  
9 treatment of hazardous substances owned or possessed by that Released Party. This sub-  
10 paragraph applies only to facilities other than the following: (1) those identified in sub-  
11 paragraph 8.F., above, (2) the LADWP right-of-way adjacent to the Montrose Plant  
12 Property and Jones, Inc. property as depicted in Attachment A to U.S. EPA, Region 9,  
13 CERCLA Unilateral Administrative Order No. 88-10, attached hereto, (3) those portions  
14 of the Normandie Avenue Ditch from 20201 Normandie Avenue to the Kenwood Drain;  
15 (4) the Stauffer Dominguez Plant Property, and (5) the Neighborhood Areas.

16           9.     A.     In addition to the reservations set out in Paragraph 8, the United  
17 States, Regional Board and DTSC reserve, and this Decree is without prejudice to, the  
18 right to institute proceedings in this action or in a new action seeking to compel the  
19 Released Parties to take a response or abatement action or to reimburse the United States,  
20 Regional Board or DTSC for additional Response Costs with respect to the Current Storm  
21 Water Pathway if, subsequent to the Date of Entry of this Decree:

22                   1.     conditions at the Current Storm Water Pathway, previously unknown  
23 to EPA, Regional Board or DTSC, are discovered; or

24                   2.     information, previously unknown to EPA, Regional Board or DTSC,  
25 is received, in whole or in part,  
26 and these previously unknown conditions or new information arise from or concern the  
27 past, present or future release of a hazardous substance from the Montrose Plant Property  
28 and together with any other relevant information indicate to EPA, Regional Board, or

1 DTSC that conditions in the Current Storm Water Pathway are not protective of human  
2 health or the environment with respect to the Current Storm Water Pathway.

3 B. For purposes of this Paragraph, the information and the conditions known to  
4 EPA, the Regional Board or DTSC shall include only that information and those  
5 conditions known to EPA and DTSC as of the date of the Date of Entry of this Decree.

6 C. The Released Parties reserve their right to contest any claims allowed by  
7 Paragraphs 9.A.1 or 9.A.2 of this Decree, and the Released Parties do not by consenting  
8 to this Decree waive any defenses to such claims, except that the Released Parties  
9 covenant not to assert, and may not maintain, any defense based upon principles of  
10 waiver, res judicata, collateral estoppel, issue preclusion, claim splitting or other defense  
11 based upon the contention that the claims that are allowed by Paragraphs 9.A.1. or 9.A.2  
12 of this Decree were or should have been brought in the instant case. In the event that the  
13 United States, Regional Board or DTSC institutes proceedings under Paragraphs 9.A.1 or  
14 9.A.2 of this Decree, the Released Parties reserve the right to assert potential cross-  
15 claims, counterclaims or third party claims against the United States, Regional Board,  
16 DTSC, or any employee, officer, agency or instrumentality thereof, relating to such  
17 claims asserted by the United States, Regional Board, or DTSC, and the agencies or  
18 instrumentalities thereof.

#### 19 COVENANTS BY RELEASED PARTIES

20 10. A. Subject to Paragraph 9.C, the Released Parties hereby covenant not  
21 to sue and agree not to assert any civil or administrative claim or cause of action against  
22 the United States, or any employee, officer, agency or instrumentality thereof, and/or  
23 DTSC and the Regional Board, or any employee, officer, agency or instrumentality  
24 thereof (but not including counties, cities, local governmental entities or sanitation  
25 districts) with respect to the Current Storm Water Pathway or this Decree, including but  
26 not limited to: (1) any direct or indirect claim for reimbursement from the Hazardous  
27 Substance Superfund established pursuant to 26 U.S.C. § 9507, under CERCLA Sections  
28 106(b)(2), 111, 112 or 113, 42 U.S.C. §§ 9606(b)(2), 9611, 9612 or 9613, any claim

1 pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671 et seq., or any  
2 claim arising from any express or implied contract pursuant to 28 U.S.C. § 1346(a)(2) or  
3 28 U.S.C. § 1491(a)(1), or any claim pursuant to the California Hazardous Substance  
4 Account Act, California Health and Safety Code §§ 25300, et seq., or under any other  
5 provision of law; (2) any claim under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607  
6 or 9613, against the United States, including any department, agency or instrumentality of  
7 the United States, and/or DTSC, or any employee, officer, agency or instrumentality  
8 thereof (but not including counties, cities, local governmental entities or sanitation  
9 districts); or (3) any claims arising out of response activities. Nothing in this Decree shall  
10 be deemed to constitute preauthorization of a claim within the meaning of Section 111 of  
11 CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

12 B. The covenants set forth in this Paragraph pertain only to matters expressly  
13 specified therein, and extend only to the United States, Regional Board and DTSC. The  
14 Released Parties reserve, and this Decree is without prejudice to, all other rights, claims  
15 and defenses against the United States, Regional Board or DTSC, including without  
16 limitation, in response to claims brought pursuant to Paragraph 9.

17 **STIPULATED PENALTIES**

18 11. A. If the payments required of the DDT Defendants by this Decree are not  
19 made by the dates specified in those Paragraphs, the DDT Defendants shall be liable, in  
20 addition to the payments specified in those Paragraphs for the following amounts for each  
21 day of delay in payment:

<u>Days of Delay</u>	<u>Payment Per Day of Delay</u>
1-14	\$ 5000/day
15-60	\$ 7500/day
Beyond 60 Days	\$ 10,000/day

26 B. In addition to the remedy provided for in the preceding Sub-Paragraph, if  
27 the payments required of the DDT Defendants by Paragraph 6 of this Decree are not  
28



1 made by the dates specified in Paragraph 6, the DDT Defendants shall be liable, in  
2 addition to the payments specified in Paragraph 6, for Interest.

3 12. Payments due under this section shall be paid by certified or bank check or  
4 warrant and disbursed, 50% to the United States and 50% to DTSC (the latter to be held  
5 in trust for the state signatories hereto), to the addressees identified in Paragraph 25.  
6 Stipulated penalties due under Paragraph 11 are due within thirty (30) days following  
7 receipt by the DDT Defendants of a written demand by the United States or DTSC for  
8 payment of such stipulated penalties, and shall be made in accordance with instructions  
9 provided by the United States or DTSC to the DDT Defendants subsequent to the Date of  
10 Lodging of this Decree, with notice to the United States or DTSC.

11 13. In addition to the remedy provided for in this section, the DDT Defendants  
12 shall be liable, in addition to the payments specified in those Paragraphs, for any costs  
13 and attorneys fees incurred by Plaintiffs in enforcing the terms of this Decree.

14 14. Payments due under this section shall be in addition to any other remedies  
15 or sanctions that may be available to the United States and DTSC on account of the DDT  
16 Defendants' failure to comply with the terms of this Decree.

#### 17 VOIDABILITY

18 15. In the event that a final judicial determination is made by the District Court  
19 or, upon appellate review, by a higher court, that the entry of this Decree in its entirety  
20 shall not be approved, this Decree and the settlement embodied herein is voidable at the  
21 discretion of any Party and the terms hereof may not be used as evidence in any litigation  
22 or other proceeding.

#### 23 COMPLIANCE WITH OTHER LAWS

24 16. This Decree shall not be construed in any way to affect any past, current or  
25 future obligation of the DDT Defendants or any other person or entity to comply with any  
26 federal, state or local law.

1                                   **RETENTION OF JURISDICTION**

2           17.    The Court shall retain jurisdiction of this matter for the purpose of entering  
3 such further order, direction or relief as may be necessary or appropriate for the  
4 construction, implementation or enforcement of this Decree or other consent decrees.

5                                   **AUTHORIZED REPRESENTATIVE**

6           18.    Each of the undersigned representatives of the DDT Defendants certifies  
7 that he or she is fully authorized to enter into the terms and conditions of this Decree and  
8 to legally execute and bind that party to this Decree.

9           19.    This Decree may be executed in any number of counterparts, and each  
10 executed counterpart shall have the same force and effect as an original instrument.

11                                  **MODIFICATION**

12           20.    The terms of this Decree may be modified only by a subsequent written  
13 agreement signed by all of the Parties signatory hereto, and approved by the Court as a  
14 modification to this Decree.

15                                  **PUBLIC COMMENT**

16           21.    The Parties acknowledge that this Decree will be subject to a public  
17 comment period of not less than 30 days in accordance with 28 C.F.R. § 50.7. The  
18 Parties further acknowledge that this Decree may be the subject of a public meeting as  
19 specified in Section 7003 of RCRA, 42 U.S.C. § 6973. The United States, Regional  
20 Board and DTSC reserve the right to withdraw their consent to this Decree if comments  
21 received disclose facts or considerations which show that this Decree is inappropriate,  
22 improper or inadequate. DDT Defendants consent to the entry of this Decree by the  
23 Court without further notice.

24                                  **EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

25           22.    Nothing in this Consent Decree shall be construed to create any rights in, or  
26 grant any cause of action to, any person not a Party to this Consent Decree. Each of the  
27 Parties expressly reserves any and all rights (including, but not limited to, any right to  
28 contribution), defenses, claims, demands, and causes of action which each Party may

1 have with respect to any matter, transaction, or occurrence relating in any way to the  
2 Current Storm Water Pathway (as defined herein) against any person not a Party hereto.

3 23. The Parties agree, and by entering this Consent Decree this Court finds, that  
4 the Released Parties are entitled, as of the Date of Entry of this Consent Decree, to  
5 protection from contribution actions or claims for "matters addressed" in this Consent  
6 Decree as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and all  
7 other provisions of federal or state statutes or of common law which limit or extinguish  
8 their liability to persons not party to this Decree. The "matters addressed" in this Consent  
9 Decree are Response Costs with respect to the Current Storm Water Pathway, as defined  
10 in this Consent Decree.

11 24. Each Released Party agrees that, with respect to any suit or claim for  
12 contribution brought by it for matters related to this Consent Decree (other than claims in  
13 this action), it will notify the United States, Regional Board and DTSC in writing no later  
14 than 60 days prior to the initiation of such suit or claim. Each Released Party also agrees  
15 that, with respect to any suit or claim for contribution brought against it for matters  
16 related to this Consent Decree, it will notify the United States, Regional Board and DTSC  
17 in writing within 10 days of service of the complaint or claim upon it. In addition, each  
18 Released Party shall notify the United States and DTSC within 10 days of service or  
19 receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order  
20 from a court setting a case for trial, for matters related to this Consent Decree (other than  
21 this action).

#### 22 NOTICE

23 25. Any notice required hereunder shall be in writing and shall be delivered by  
24 hand, facsimile or overnight mail as follows:

25 Notice to the United States and the State:

26 As to the United States:  
27 Chief, Environmental Enforcement Section  
28 Environment and Natural Resources Division  
DO Case #90-11-3-511  
U.S. Department of Justice  
P.O. Box 7611

1 Washington, D.C. 20044-7611

2 As to EPA:  
3 John Lyons  
4 Assistant Regional Counsel  
5 U.S. EPA Region 9  
6 Mailcode ORC3  
7 75 Hawthorne St.  
8 San Francisco, CA 94105

9 As to DTSC:  
10 Barbara Coler  
11 Division Chief, Statewide Cleanup Operations Div.  
12 700 Heinz Avenue, Suite 200  
13 Berkeley, CA 94710-2721

14 Thomas Cota  
15 Branch Chief  
16 Southern California Cleanup Operations - Cypress Office  
17 California Department of Toxic Substances Control  
18 5796 Corporate Avenue  
19 Cypress, CA 90630

20 As to Regional Board:  
21 Dennis Dickerson  
22 Executive Officer  
23 California Regional Water Quality Control Board, Los Angeles Region  
24 320 W. 4<sup>th</sup> Street, Suite 200  
25 Los Angeles, CA 90013

26 As to State of California:  
27 Brian Hembacher  
28 Deputy Attorney General  
Environment Section  
Office of the Attorney General  
300 South Spring Street  
Los Angeles, CA 90013  
Facsimile No. (213) 897-2802

29 As to DDT Defendants:  
30 President  
31 Montrose Chemical Corporation of California  
32 600 Ericksen Avenue, Suite 380,  
33 Bainbridge Island, WA 98110

34 David Mulliken  
35 Latham & Watkins  
36 701 B Street, Suite 2100  
37 San Diego, CA 92101

38 Eugenie C. Gavenchak  
39 Senior Vice President and Deputy General Counsel  
40 News America Incorporated  
41 1211 Avenue of the Americas  
42 New York, N.Y. 10036

1 Peter Simshauser  
Skadden, Arps, Slate, Meagher & Flom LLP  
2 300 South Grand Avenue  
Los Angeles, CA 90071

3 Joseph C. Kelly  
4 Vice President and General Counsel  
Stauffer Management Company  
5 1800 Concord Pike  
P.O. Box 15438  
6 Wilmington, DE 19850-5438

7 Paul B. Galvani  
Ropes & Gray  
8 One International Place  
Boston, MA 02110.

9 Each party to this Decree may change the person(s) it has designated to receive  
10 notice for that party, or the addresses for such notice, by filing a written notice of such  
11 change with the Court and serving said notice on each of the other Parties to this Decree.

12 **ENTIRE AGREEMENT**

13 26. This Decree constitutes the entire understanding of the Parties with respect  
14 to its subject matter. The fact that any Party suggested language different from, or  
15 additional to, any language ultimately adopted in this Decree shall not be taken into  
16 account in interpreting this Decree.

17 **EFFECTIVE DATE**

18 27. This Decree shall be effective upon the date which this Decree has been  
19 entered by the United States District Court.

20 28. By signature below, all Parties consent to this Decree.

21 **JUDGMENT**

22 THE FOREGOING Consent Decree among Plaintiffs United States and  
23 DTSC, and the DDT Defendants and the Regional Board is hereby APPROVED and  
24 ORDERED.

25 //

26 //

27 //

28 //

1           There being no just reason for delay, this Court expressly directs, pursuant  
2 to Rule 54(b), Federal Rules of Civil Procedure, ENTRY OF FINAL JUDGMENT in  
3 accordance with the terms of this Decree; each party hereto shall bear its own costs and  
4 attorney's fees except as specifically provided herein.

5  
6 IT IS SO ORDERED

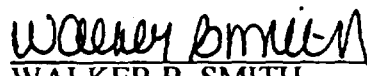
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THE HONORABLE MANUEL REAL  
UNITED STATES DISTRICT JUDGE

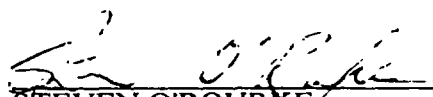
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12 FOR THE UNITED STATES OF AMERICA:

13           WE HEREBY CONSENT to the entry of the Consent Decree in United  
14 States, et al. v. Montrose Chemical Corporation of California, et al., No. CV 90-3122-R,  
15 subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

16 Dated: 12/11, 2001

  
\_\_\_\_\_  
WALKER B. SMITH  
Deputy Section Chief  
Environmental Enforcement Section  
Environment & Natural Resources Division  
United States Department of Justice

17  
18  
19  
20  
21 Dated: 12/12, 2001

  
\_\_\_\_\_  
STEVEN O'ROURKE  
Environmental Enforcement Section  
Environment & Natural Resources Division  
United States Department of Justice  
Attorneys for the United States

1 FOR EPA:

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4 Dated: 12/20, 2001

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10 Dated: 12/20/01, 2001

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JANE DIAMOND  
Acting Director of the Superfund Division  
United States Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, CA 94105



KATHLEEN JOHNSON  
JOHN J. LYONS  
MICHELE BENSON  
Office of the Regional Counsel  
United States Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

1 FOR THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCE CONTROL:

2 WE HEREBY CONSENT to the entry of the Consent Decree in United  
3 States, et al. v. Montrose Chemical Corporation of California, et al., No. CV 90-3122-R,  
4 subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

5  
6 DATE: December 14, 2001




BARBARA COLER

Division Chief, Statewide Cleanup Operations  
Division, California Department of Toxic  
Substances Control, 700 Heinz Avenue, Suite  
200, Berkeley CA 94710-2721.



1 FOR THE LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD:

2 WE HEREBY CONSENT to the entry of the Consent Decree in United  
3 States, et al. v. Montrose Chemical Corporation of California, et al., No. CV 90-3122-R,  
4 subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

5  
6 DATE: December 14, 2001   
7 DENNIS DICKERSON  
8 Executive Officer  
9 California Regional Water Quality Control  
10 Board, Los Angeles Region  
11 320 W. 4th Street, Suite 200  
12 Los Angeles, CA 90013  
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1 FOR DDT DEFENDANTS AND RELEASED PARTIES:

2 WE HEREBY CONSENT to the entry of the Consent Decree in United  
3 States, et al. v. Montrose Chemical Corporation of California, et al., No. CV 90-3122-R.

4 NEWS PUBLISHING AUSTRALIA LTD.

5  
6 DATE: December 21, 2001 By: Eugenie C. Gavenchuk  
7 SIGNATURE

8  
9 Eugenie C. Gavenchuk  
NAME (printed or typed)

10  
11 Senior Vice-President  
TITLE (printed or typed)

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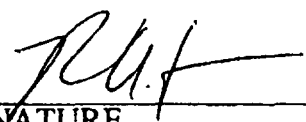
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DATE: 12/18/2001

By:

  
SIGNATURE

Randall A. Jones  
NAME (printed or typed)

Vice President  
TITLE (printed or typed)

ATKEMIX THIRTY-SEVEN, INC.:

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DATE: 12/12/01

By:   
SIGNATURE

Brian A. Spiller  
NAME (printed or typed)

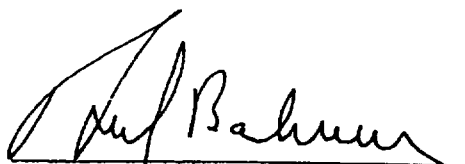
President  
TITLE (printed or typed)

MONTROSE CHEMICAL CORPORATION OF CALIFORNIA:

DATE:

12/17/01

By:



SIGNATURE

Frank Bachman

NAME (printed or typed)

President

TITLE (printed or typed)

STAUFFER MANAGEMENT COMPANY, LLC

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DATE: 12/12/01

By:   
SIGNATURE

Brian A. Spitzer  
NAME (printed or typed)

President  
TITLE (printed or typed)

IMPERIAL CHEMICAL INDUSTRIES, PLC

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DATE: 18/12/01

By:

SIGNATURE

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MICHAEL HERLIHY  
NAME (printed or typed)

6

7

GENERAL COUNSEL  
TITLE (printed or typed)

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ICI INTERNATIONAL INVESTMENTS, INC.

DATE: 18/12/01

By:

SIGNATURE

MICHAEL HERLIHY  
NAME (printed or typed)

GENERAL COUNSEL  
TITLE (printed or typed)

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DATE: 12/12/01

By:   
SIGNATURE

Brian A. Spiller  
NAME (printed or typed)

General Mgr. Environ. Services & Eng. Services  
TITLE (printed or typed)

ZENECA HOLDINGS, INC.

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DATE: 12/12/01

By: Brian A. Spiller  
SIGNATURE

Brian A. Spiller  
NAME (printed or typed)

Gen MGR.  
TITLE (printed or typed)

STAUFFER CHEMICAL COMPANY

By: AVENTIS CROPSCIENCE USA INC. SUCCESSOR TO STAUFFER CHEMICAL COMPANY

DATE: December 20, 2001

By:

SIGNATURE

George S. Goodridge

NAME (printed or typed)

Assistant Secretary

TITLE (printed or typed)

RHODIA, INC.

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DATE: December 17, 2001

By:

  
SIGNATURE

John P. Donahue  
NAME (printed or typed)

Senior Vice President, General Counsel  
TITLE (printed or typed) and Secretary  
Rhodia Inc.

STAUFFER MANAGEMENT COMPANY

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DATE: 12/12/01

By:   
SIGNATURE

Brian A. Spiller  
NAME (printed or typed)

PRESIDENT  
TITLE (printed or typed)

AVENTIS CROPSCIENCE USA LP

DATE: 12/18/2001

By:

SIGNATURE

Randall A. Toner  
NAME (printed or typed)

Vice President + General Counsel  
TITLE (printed or typed)

1 NEWS AMERICA INCORPORATED

2  
3  
4 DATE: December 21, 2001

By:

Eugene C. Gavanchuk  
SIGNATURE

Eugene C. Gavanchuk  
NAME (printed or typed)

Senior Vice President  
TITLE (printed or typed)

# ATTACHMENT



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

IN THE MATTER OF:

Montrose Chemical Corporation of  
California,

RESPONDENT.

Proceeding Under Section 106(a)  
of the Comprehensive Environ-  
mental Response, Compensation,  
and Liability Act of 1980  
(42 U.S.C. §9606(a))

ORDER

U.S. EPA Docket No. 88-10

I. JURISDICTION

The following Order is issued to Montrose Chemical Corporation of California ("Respondent"), pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9606(a), and delegated to the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") and further delegated to the Assistant Administrator for Solid waste and Emergency Response, the Regional Administrators, and Director of the Toxics and Waste Management Division, EPA, Region IX.

- 1 -

1 The Director, Toxics and Waste Management Division, EPA  
2 Region IX has determined that there may be an imminent or  
3 substantial endangerment to the public health or welfare or to  
4 the environment because of an actual or threatened release of  
5 hazardous substances from a facility owned by Montrose Chemical  
6 Corporation (hereinafter "Montrose").

7 This Order directs Montrose to undertake actions to protect  
8 public health and the environment from this endangerment.

9 II. STATEMENT OF PURPOSE

10 In issuing this Order, the objective of EPA is to prevent  
11 further migration of contaminants in near-site areas through  
12 wind dispersion and surface run-off, to limit migration of  
13 contaminants into ground water, and to prevent direct human  
14 contact with the contaminated soils.

15 III. FINDINGS OF FACT

16 A. Background

17 1. Montrose Chemical Corporation of California operated a  
18 plant which manufactured dichlorodiphenyltrichloroethane (DDT).  
19 The plant occupied a 13-acre parcel of property ("Montrose  
20 site" or "the Site") located at 20201 South Normandie Avenue in  
21 an unincorporated portion of Los Angeles County near Torrance,  
22 California, and was in operation from 1947 to 1982. The Site  
23 is surrounded by a heavy industrial area to the southwest and  
24 north, light industrial area to the east and immediate south,  
25 and by an agricultural area to the west. Approximately one  
26 quarter mile to the south and southwest is a residential area  
27 with about 3,000 residents.

28 / / /

2. The following raw materials were used to manufacture and process DDT.

Ammonium and sodium lignin sulfonates (Orzan)  
Amorphous silicon dioxide hydrated (Hi-Sil 233)  
Calcium silicate synthetic (Micro-Cel E)  
Calcium sulfate dihydrate (industrial ground gypsum)  
Chloral (trichloroethanal)  
Monochlorobenzene (MCB)  
Oleum - 65% (fuming sulfuric acid)  
Sodium-N-methyl-N-oleoyl taurate (Igepon T-77)  
Sulfonated lignin (Reax 45A)  
Sodium hydroxide - 50% solution

3. DDT and MCB are hazardous substances as defined by 5101(14) of CERCLA.

4. Storm-water runoff from portions of the plant was directed to a waste settling and recycling impoundment. The impoundment was unlined until 1970.

5. Storm-water runoff from other portions of the plant flowed to the southeast corner of the plant site, offsite through an unlined ditch, and eventually entered the Torrance Lateral. Water from the Torrance Lateral flows to the Dominguez Channel, which empties into the Consolidated Slip portion of Los Angeles Harbor.

6. Nine out of 14 shallow borings obtained in the Los Angeles Department of Water and Power Easement directly south of the site show contamination with DDT in concentrations exceeding 1 part per million (ppm). The highest concentration of 630 ppm was detected near a historic drainageway from the Montrose site. BHC in concentrations up to 17.0 ppm was also detected in this boring. Acetone was detected in 2 of the 14 borings at concentrations ranging from 4.0 to 21.0 ppm.

7. 14 of the 16 shallow borings in the Normandie Avenue

1 drainage ditch, which borders the site to the east, showed  
2 contamination with DDT in excess of 1 ppm. The maximum  
3 concentration detected was 8,600 ppm. Detectable levels of BHC  
4 were found in 10 of the 16 borings, including a maximum  
5 concentration of 81 ppm.

6 8. One of three borings in Southern Pacific Railroad  
7 property, south-southeast of Montrose showed contamination with  
8 DDT up to 11 ppm.

9 9. The three areas sampled are publicly accessible and  
10 known to be used for bicycle, pedestrian and light truck traffic,  
11 providing a direct route of human exposure. In addition,  
12 contaminants are subject to further migration through wind  
13 dispersion, surface run-off and infiltration into groundwater.

14 B. Conclusions of Law and Determinations

15 Based on the Background information set out in Paragraph A  
16 of this Article, EPA has determined that:

17 1. The Montrose site is a "facility" as defined in Section  
18 101(9) of CERCLA, 42 U.S.C. § 9601(9).

19 2. Montrose Chemical Corporation of California is a "person"  
20 as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

21 3. Wastes, including DDT, and their constituents at the  
22 site are "hazardous substances" as defined in Section 101(14)  
23 of CERCLA, 42 U.S.C. § 9601(14).

24 4. The past, potential future current and migration of  
25 hazardous substances from the Site constitutes actual and/or  
26 threatened "releases" as defined in Section 101(22) of CERCLA,  
27 42 U.S.C. § 9601(22).

28 / / /

1 5. Montrose is a potentially responsible party, pursuant  
2 to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

3 6. The actual and/or threatened release of hazardous  
4 substances from the Site may present an imminent and substantial  
5 endangerment to the public health or welfare or the environment,  
6 as defined in §101(14) of CERCLA, 42 U.S.C. § 9601(14).

7 7. In order to prevent or mitigate immediate and  
8 significant risk to public health and the environment, it is  
9 necessary that immediate action be taken to contain and prevent  
10 the release or threatened release of hazardous substances from  
11 the facility.

12 8. The response measures ordered herein are consistent  
13 with the National Contingency Plan, 40 C.F.R. Part 300.

14 IV. WORK TO BE PERFORMED

15 A. Scope of Work:

16 Based upon the forgoing Findings of Fact, Conclusions of  
17 Law, and Determinations, Montrose is hereby directed to  
18 implement the following measures:

19 1. Seven (7) days after the effective date of this Order,  
20 Montrose shall submit a proposal for undertaking temporary  
21 capping measures in the areas designated in Attachment A  
22 (attached hereto and incorporated by reference herein). The  
23 proposal should include the requirements outlined in Attachment  
24 B (attached hereto and incorporated by reference herein). The  
25 proposal shall contain a schedule for implementation. The cap  
26 which is the subject of this Order is meant to be an interim  
27 measure and is not meant to be a final remedy for the contamination  
28 in these areas.

1           2. Two (2) days after EPA approval of the temporary capping  
2 measure proposal, Respondent shall begin implementation of the  
3 plan. The plan shall be fully implemented within the time  
4 period set forth in the schedule.

5           3. Once installed, Montrose shall regularly inspect and  
6 maintain the cap to repair any cracks that will allow infiltration  
7 of rainwater or cap erosion.

8       B. Contractors

9           The Work shall be performed under the direction and  
10 supervision of a qualified professional engineer, and/or any  
11 other necessary individual with expertise in hazardous waste  
12 site remediation. Prior to commencement of the work, Montrose  
13 shall notify EPA of the name and title of such individuals,  
14 contractors, or subcontractors, who will perform the work.

15       C. Project Coordinator

16           Within two (2) days of the effective date of the Order,  
17 Montrose shall designate and provide EPA with the name and  
18 address of a Project Coordinator. To the maximum extent  
19 possible, all oral communications between Montrose and EPA  
20 concerning the activities performed pursuant to this Order  
21 shall be directed through the Project Coordinators. All  
22 documents, including progress and technical reports, approvals,  
23 and other correspondence concerning the activities performed  
24 pursuant to the terms and conditions of this Order shall be  
25 delivered to the EPA Project Coordinator in accordance with  
26 Section VI, infra. The EPA Project Coordinator for this project  
27 shall be:

28       / / /

Ms. Johanna Miller  
EPA Project Coordinator (T-4-2)  
U.S. Environmental Protection Agency, Region IX  
215 Fremont Street  
San Francisco, CA 94105

D. Reporting Requirements

Within fifteen (15) calendar days of completion of the activities outlined above, Montrose shall submit to EPA a report describing the interim capping implementation and a plan for maintenance of the paved areas.

V. COMPLIANCE WITH APPLICABLE LAWS

In carrying out the terms of this Order, Montrose shall comply with all applicable federal, state, and local laws and regulations. All hazardous substances and wastes removed from the facility must be handled in accordance with all applicable laws, including Subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. 6921 et seq., 40 CFR parts 262, 263, and 265, and the California Hazardous Waste Control Act, California Health and Safety Code § 25100 et seq.

VI. SUBMITTALS

All submittals and notifications to EPA pursuant to this Order shall be made to:

1. Three copies of documents to be submitted to EPA should be sent via overnight mail to:

Ms. Johanna Miller  
EPA Project Coordinator (T-4-2)  
US Environmental Protection Agency, Region IX  
215 Fremont Street  
San Francisco, California 94105

One copy of documents to be submitted to EPA shall also be sent to:

/ / /

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1 Mr. Robert P. Ghirelli  
2 Executive Officer  
3 Regional Water Quality Control Board  
4 107 South Broadway, Room 4027  
5 Los Angeles, California 90012

6 Mr. Angelo Bellomo  
7 Chief, Southern California Section  
8 Toxic Substances Control Division  
9 Department of Health Services  
10 107 South Broadway, Room 7128  
11 Los Angeles, California 90012

12 Montrose must consult with the above listed regulatory  
13 agencies to ensure that the plans submitted pursuant to this  
14 Order are consistent with state and local requirements. No  
15 informal advice, guidance, suggestions or comments by EPA  
16 regarding reports, plans, specifications, schedules or any  
17 other writing shall be construed to relieve Montrose of its  
18 obligation to obtain such formal approvals as may be required  
19 herein.

#### 20 VII. ACCESS

21 To the extent that the work to be performed under this  
22 Order must be performed on property owned or controlled by  
23 parties other than Montrose, Montrose will use its best efforts  
24 to obtain access agreements from the present owners, as the  
25 need for such access may arise. Such agreements shall provide  
26 reasonable access to Montrose, its contractors and agents, EPA,  
27 and its contractors and agents and, if necessary, the State  
28 Department of Health Services, South Coast Air Quality Management  
District. In the event Montrose cannot obtain such access,  
Montrose shall immediately notify EPA regarding both the lack  
of, and efforts to obtain such agreements.

/ / /



1 EPA and/or any EPA authorized representative shall at least  
2 have the authority to enter and freely move about all property  
3 at the Site at all reasonable times for the purposes of, inter  
4 alia: reviewing the progress of Montrose in carrying out the  
5 terms of this Order; conducting such tests as EPA or the Project  
6 Coordinator deem necessary; using a camera, sound recording, or  
7 other documentary type equipment; and verifying the data  
8 submitted to EPA by Montrose. All parties with access to the  
9 Site pursuant to this Article shall comply with approved health  
10 and safety plans.

11 VIII. ON-SCENE COORDINATOR

12 EPA shall appoint an On-Scene Coordinator (OSC) who shall  
13 have the authority to be on-site at all times when response work  
14 is being undertaken pursuant to this Order. The OSC shall have  
15 the authority vested in the "On-Scene Coordinator" by 40 C.F.R.  
16 Part 300, et seq.

17 IX. ENDANGERMENT DURING IMPLEMENTATION

18 In the event that the Director, Toxics and Waste Management  
19 Division, EPA, Region IX determines that any activities (whether  
20 pursued in implementation of or in noncompliance with this Order)  
21 or circumstances are endangering the health and welfare of people  
22 on the site or in the surrounding area or to the environment, the  
23 Director may order Montrose to stop further implementation of  
24 this Order for such period of time as needed to abate the  
25 endangerment.

26 X. DISCLAIMER OF EPA LIABILITY

27 EPA shall not be liable for the contracts, acts, errors or  
28 omissions of the agents, employees or contractors of Montrose

1 entered into, committed or performed with respect to or in the  
2 performance of this Order, nor shall EPA be liable for any injury  
3 or damages to persons or property resulting from the acts or  
4 omissions of Montrose, its agents, contractors or employees in  
5 carrying out activities pursuant to this Order. Any standards,  
6 procedures or protocols prescribed in this Order, as well as the  
7 oversight and review of the implementing plans to be followed by  
8 Montrose in the performance of its obligations under this Order  
9 are for assurance of the quality, accuracy and completeness of  
10 the Work and do not constitute a right to control the actions of  
11 Montrose other than to the extent specifically provided for in  
12 this Order.

13 EPA is not a party to any contract Montrose may enter into  
14 regarding the work to be performed at the Site. Nothing  
15 contained in this Order shall be construed to create, either  
16 expressly or by implication, the relationship of agency between  
17 EPA and Montrose. Montrose, its employees and contractors are  
18 not authorized to represent or act on behalf of EPA, its  
19 employees and contractors in any matter related to this Order.

20 XI. PENALTIES FOR NONCOMPLIANCE

21 A willful violation or failure or refusal to comply with  
22 this Order, or any portion thereof, may subject Montrose to a  
23 civil penalty of not more than \$25,000 per each day in which a  
24 violation occurs or such failure to comply continues, pursuant  
25 to the provisions of Section 106(b) of CERCLA, 42 U.S.C. §9606(b).  
26 Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3) also provides  
27 for punitive damages in an amount up to three times the total  
28 of all costs incurred by the Government if a Respondent fails to

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1 comply with an Order without sufficient cause.

2 EPA may take over the response actions required by this  
3 Order at any time if EPA determines that Montrose is not  
4 taking appropriate action under this Order. In the event EPA  
5 assumes responsibility for these actions, Montrose shall be  
6 liable for all costs incurred by EPA to perform this work. EPA  
7 reserves the right to take any enforcement action pursuant to  
8 CERCLA and/or any available legal authority, including the right  
9 to seek injunctive relief, monetary penalties, and punitive  
10 damages for any violation of law or this Order. EPA may order  
11 additional actions if deemed necessary by EPA to protect the  
12 public health or welfare or the environment.

13 XII. OPPORTUNITY TO CONFER

14 Montrose may request a conference with the Director, Toxics  
15 and Waste Management Division, EPA Region IX or his staff to  
16 discuss the provisions of this Order. At any conference held  
17 pursuant to your request, you may appear in person or by counsel  
18 or other representatives for the purpose of presenting any  
19 objections, defenses or contentions which you may have regarding  
20 this Order. If you desire such a conference, you must make  
21 such request orally within 24 hours of receipt of this Order,  
22 to be immediately confirmed in a written request. Please make  
23 any such request to either of the contact persons listed below.

24 XIII. PARTIES BOUND

25 This Order Shall apply to and be binding upon Montrose, its  
26 officers, directors, agents, employees, contractors, successors  
27 and assigns.

28 / / /

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XIV. NOTICE OF INTENT TO COMPLY

Immediately upon receipt of this Order, Montrose shall orally inform EPA of its intent to comply with the terms of this Order. This shall be confirmed in writing within two (2) days of receipt of this Order.

XV. RECORD PRESERVATION

Montrose shall preserve, during the pendency of this Order and for a minimum of six (6) years after its termination, all records and documents in their possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to the Site, despite any document retention policy to the contrary. After this six year period, Montrose shall notify EPA within thirty (30) calendar days prior to the destruction of any such documents. Additionally, if EPA requests that some of or all documents be preserved for a longer period of time, and establishes a reasonable basis for that request, Montrose shall comply with that request.

XVI. EFFECTIVE DATE

Notwithstanding any conferences requested pursuant to the provisions of this Order, this Order is effective upon receipt, and all times for performance shall be calculated from that date.

It is so ordered on this 19<sup>th</sup> day of February, 1988.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: Jeff Zerkson

JEFF ZERKSON  
DIRECTOR, TOXICS & WASTE MANAGEMENT DIVISION  
EPA, REGION IX

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## 1 Contact Persons:

2 Johanna Miller  
3 Superfund Programs Branch (T-4-2)  
4 U.S. Environmental Protection Agency  
5 215 Fremont Street  
6 San Francisco, California 94105  
7 (415) 974-8530

8 Montrose On-Scene Coordinator  
9 Emergency Response Section (T-3-3) new T-3-3  
10 U.S. Environmental Protection Agency  
11 215 Fremont Street  
12 San Francisco, California 94105  
13 (415) 974-7464

14 Lisa Haage  
15 Assistant Regional Counsel (ORC)  
16 U.S. Environmental Protection Agency  
17 215 Fremont Street  
18 San Francisco, California 94105  
19 (415) 974-8043

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NOTE:  
FINISHED GRADE ELEVATION IS "OF  
OF ASPHALT CAP.

- LONGBOARD**
- A.C. • ASPHALT CONCRETE
  - P.L. • FLEXIBLE SLIPSTAP
  - C.C. • FLEXIBLE SURFACE ELEVATION
  - T.C. • TOP OF CURB ELEVATION
  - C.L. • CHAIN LINE
  - CL • CURBLINE
  - D.B. • DRAINAGE
  - FOOT • FOOTWAY
  - H.B. • SIDEWALK
  - GRND. • CONCRETE
  - TOP • TOP OF SLAB
  - PC • FINISHED GRADE
  - BUILT. ELEVATION
  - FINISHED GRADE ELEVATION
  - DIRECTION OF FLOW

DISCUSS BLANK 1      REF: 8800

COLLARED AREA ON TOP OF CURB WEST OF  
CUT, 10' FEET NORTH OF END OF  
CURB, 0 FEET WEST OF THE  
WESTERLY CURB AND 10' FEET NORTH  
OF THE NORTHERLY CURB

				DRAWN BY ED ELLA JULIE 1211 A CADA		 METCALF & EDDY	SCALE:  AS SHOWN	SITE GRADING PLAN	JOB: _____
				SEPT. CHECK			FILE NO. _____		
				FINAL CHECK					SHEET _____
DESIGN	DATE	MADE BY	CHECKED BY	DESCRIPTION					
REVISIONS									

ATTACHMENT B

Proposal Specification for the Interim Capping  
Measures at Montrose Chemical Corporation

The proposal shall contain specific plans as to how the following requirements will be attained.

A. GENERAL REQUIREMENTS

## 1. SPECIAL CONSIDERATIONS FOR HAZARDOUS WASTE SITES

The contractor shall in all activities (1) minimize the generation of hazardous wastes that must be disposed of, off-site; (2) prevent hazardous substances from leaving the site; and (3) provide for decontamination of all equipment and personnel that are in contact with hazardous materials. Decontamination procedures should be contained in the proposal and be consistent with EPA Region 9 procedures.

## 2. DISPOSAL OF CONTAMINATED SOIL WASTE AND WASTEWATER

The contractor shall provide necessary equipment to contain all washwater created during decontamination such that fluids are not in contact with the ground surface and will not contaminate the ground in any way.

The contractor shall place soil waste and washwater into containers as directed by the Engineer. The contractor shall provide 55-gal DOT Regulation 17H steel drums as necessary to contain any hazardous material, and shall transport these drums to a designated area on the Montrose site for temporary storage.

## 3. HEALTH &amp; SAFETY PLAN

The contractor shall submit a Health & Safety Plan for review and approval by the United States Environmental Protection Agency prior to beginning operations. The plan must satisfy all Environmental Protection Agency requirements including the use of protective clothing and respiratory protection, if necessary, and personnel monitoring to ensure safe levels of exposure.

B. CONTRACTOR RESPONSIBILITIES

1. The contractor shall restore or replace, when and as directed, any public or private property damaged by his

work, equipment, or employees, to a condition at least equal to that existing immediately prior to the beginning of operations. To this end, the Contractor shall do as required all necessary highway or driveway, walkway, and landscaping work. Suitable materials, equipment, and methods shall be used for such restoration. The restoration of existing property or structure shall be done as promptly as practicable as work progresses, and shall not be left until the end of the contract period.

C. DETAILED SPECIFICATIONS

1. AREA A (Parallel to Normandie Avenue)

The contractor shall prepare detailed specifications for placing a minimum of 3 inches of gunnite in this area. The specifications shall be in accordance with the Standard Specification for Public Works Construction, Southern California Chapter of the American Public Works Association, 1979 Edition.

The specifications should include a field quality control program.

2. AREA B (Los Angeles Department of Water and Power Easement)

The contractor shall prepare detailed specifications for lime treating the soil in this area to a depth of 8 inches. The specifications shall be in accordance with the Standard Specification for Public Works Construction, Southern California Chapter of the American Public Works Association, 1979 Edition.

The specification should include:

a. A surface treatment that will produce a stable wearing surface for the anticipated traffic. Recommended is 10-15 lbs. per square yard of 1/4 in. to No. 8 Sieve size aggregate mixed with 0.10 to 0.15 gallons of RS1, RS2, CRS-1 or CRS-2 asphalt per yard. Alternative methods may be proposed but are subject to approval by EPA and the Los Angeles Department of Water and Power.

b. Limits for moisture control in the field. Optimum moisture is 14 percent.

c. The method of mixing the soil and lime and curing of the in-place mixture.

d. Appropriate compaction requirements.

e. A field quality control program which would include at a minimum verifying the percent lime, compaction, and depth of mixing.



## 3. AREAS A &amp; B

The contractor shall apply water for dust control in sufficient quantity to preclude dust emissions. The quantity water used shall not result in runoff from the site. Water application shall be in accordance with all United States Environmental Protection Agency, California Department of Health Services, and South Coast Air Quality Management Board regulations for remedial action at hazardous waste sites.

1 **DECLARATION OF PROOF OF SERVICE**

2 **RE: United States of America and State of California v. Montrose Chemical Corporation**  
3 **of California, et al.**  
4 **Case No.: CV903122R**

5 I, Aimee Lopez, declare:

6 I am employed in the City of Los Angeles, County of Los Angeles, State of California. I  
7 am over the age of 18 years and not a party to the within action. My business address is 300 S.  
8 Spring Street, 5<sup>th</sup> Floor, Los Angeles, California 90013. On May 1, 2002, I served the documents  
9 named below on the parties in this action as follows:

10 **DOCUMENT SERVED: PARTIAL CONSENT DECREE (RELATING TO CURRENT**  
11 **STORM WATER PATHWAY)**

12 **SERVED UPON:**

13 **BY MAIL:** I caused each such envelope, with postage thereon fully prepaid, to be placed  
14 in the United States mail at Los Angeles, California. I am readily familiar with the  
15 practice of the Office of the Attorney General for collection and processing of  
16 correspondence for mailing, said practice being that in the ordinary course of business,  
17 mail is deposited in the United States Postal Service the same day as it is placed for  
18 collection.

19 I hereby certify that I am employed in the office of a member of the Bar of this Court at  
20 whose direction the service was made.

21 **XX BY OVERNIGHT MAIL:** I am readily familiar with the practice of the Office of the  
22 Attorney General for collection and processing of correspondence for overnight delivery  
23 and know that the document described herein will be deposited in a box or other facility  
24 regularly maintained by United Parcel Service for overnight delivery.

25 **SEE ATTACHED SERVICE LIST**

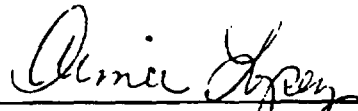
26 **XX BY FACSIMILE:** I caused to be transmitted the document described herein via the  
27 following facsimile number:

28 **SEE ATTACHED SERVICE LIST**

I declare under penalty of perjury under the laws of the State of California that the above  
is true and correct. Executed on May 1, 2002, at Los Angeles, California.

Aimee Lopez

Declarant

  
Signature

1 UNITED STATES OF AMERICA AND STATE OF CALIFORNIA  
2 v.  
3 MONTROSE CHEMICAL CORPORATION OF CALIFORNIA, et al.

4 NO.: CV903122R

5 VIA FACSIMILE AND OVERNIGHT MAIL (UPS)

6 Peter Simshauser, Esq.  
7 Skadden, Arps, Slate, Meagher & Flom  
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9 Los Angeles, CA 90071-3144  
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20 Latham & Watkins  
21 701 B Street, Suite 2100  
22 San Diego, CA 92101-8116  
23 Telephone: (619) 236-1234  
24 Facsimile: (619) 696-7419

Steven O'Rourke  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
1425 New York Avenue, NW, Room 13073  
Washington, D.C. 20005  
P.O. Box 7611  
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